IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13594 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AGRICULTURAL PRODUCE MARKET COMMITTEE ANKLAV - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR DILIP B RANA for Petitioner(s) : 1,
MR MENGDEY, AGP for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2 - 3.
MR BS PATEL for Respondent(s) : 4,
MRS RANJAN B PATEL for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 04/09/2006

ORAL JUDGMENT

1. Rule. Mr.Mengdey, learned AGP waives service of

notice of Rule for Respondent No.1 to 3 and Mr.B.S.Patel, learned Counsel for Respondent No.4 waives service of notice of Rule. With the consent of the learned Counsel appearing for both the sides, the matter is finally heard today.

2. The short facts of the case appear to be that the Agriculture Produce Market Committee, Borsad was having the market area comprising of two revenue Talukas namely; Borsad Taluka as well as Anklav Taluka . It appears that the State Government on 23.8.2004 issued a notification for division of APMC, Borsad into two market committees namely; APMC, Borsad comprising of the market area of revenue Borsad Taluka and APMC, Anklav comprising of the market area of revenue Anklav Taluka. There is no dispute on the said aspect and it has been stated that the notification is given effect on 30.8.2004 so far as it relates to division of these two market committees are concerned. It appears that thereafter as per the petitioner 10 employees, who were formerly working with the then APMC,

Borsad are transferred to the petitioner market committee and it was represented by the petitioner to Respondent No.4 market committee to transfer the amount of provident fund of these employees as well as the amount of gratuity up to that date and as per the petitioner, the total amount is comprised of Rs.20,60,989/- towards provident fund (hereinafter referred to as “PF”) and Rs.16,22,289/- towards gratuity, total Rs.36,83,278/-. It appears that thereafter the amount was not transferred, however, the District Registrar and the Dy. Director ultimately held the meeting and it is not in dispute that for assessing the valuation of the property and internal division the work was assigned to Shri Ashok B. Maheshwari & Co., Chartered Accountants. It is also not in dispute that 32 villages are falling in the market area of the petitioner market committee, whereas 66 villages are falling in the market area of respondent No.4 market committee and, therefore, it appears that the ratio is that of

66:32 for the purpose of division of all assets and liabilities of the then APMC, Borsad. Respondent No.4 is to receive 66% share, whereas the petitioner is to receive 32% share. There is no clarification appearing on record for the surplus 2% and its appropriation.

3. I have heard the learned Counsel appearing for the petitioner as well as the learned Counsel appearing for the respondents.

4. As for division of the market committee, the then APMC, Borsad into two market committees namely; the petitioner as well as respondent No.4, there is also no dispute on the aspects that 66 villages are now falling within the area of respondent No.4 and 32 villages are falling within the area of the petitioner. Therefore, if the criteria is established on the basis of the proportionate area of the number of the villages, such cannot be said as unreasonable or arbitrary. However, it appears that while undertaking the aforesaid division there is no proper care taken for the exact proportion thereof and the reason being that if both the

shares are counted, it would be 98% of the total property as against 100%. It does not come on record for allotment/apportionment of 2% which is to remain undistributed. Therefore, considering the same, I find that the proper ratio would be 67.25% for respondent No.4, whereas for the petitioner market committee, it should be 32.75%. It will be for the District Registrar to instruct concerned Chartered Accountant in this regard for actual arithematic calculation of the share of the properties. On the aforesaid aspects, it appears that principally there is no dispute raised by the learned Counsel appearing for both the sides, except for 2% which remained as undistributed.

5. One of the grievances as sought to be canvassed on behalf of the petitioner is that the PF amount, as it was in credit of the concerned PF accounts of the employees, has got to be transferred on the basis of the actual amount lying as credit and not on the basis of the aforesaid ratio. It has been submitted that the the PF credit of the employees, who are

transferred to the petitioner market committee, is an independent aspect than the division of the properties between the two market committees.

6. Mr.Patel, learned Counsel appearing for Respondent No.4 market committee, however, submitted that as such it would also be a proportionate appropriation since the PF may fall within the assets and liabilities of the market committee.

7. As such the PF amount which is deducted from the remuneration/salary paid to the employees is the amount of the concerned employees and the market committee is only holding the amount as per the Scheme of the Provident Fund. So will be the case of the amount disbursed by the market committee towards its own contribution as per the Scheme of the Provident Fund and credited in the PF Account of concerned employee. The aforesaid amount of PF in possession of the market committee is not the property of the market committee, which is to be divided, but it can rather be said that the market committee is

holding the control over the aforesaid amount of the PF in capacity of the fiduciary relationship and also in view of the Scheme of the PF applicable to the employees of the market committee. The amount of PF is even otherwise also a non-attachable amount. Therefore, such amount of PF held by the then market committee is not the property of the then market committee, but is the property of concerned employees, which is in possession of the market committee. Therefore, when the division is to take place of market committee into two or more market committees, if the employees of the existing market committees are transferred to another market committee, the actual amount lying as credit in the PF account of the employees concerned is required to be transferred to the other market committee, which is assigned to such employees, irrespective of the internal division of the properties between two market committees. Therefore, if ten employees are transferred to the petitioner market committee on account of the division, the

actual provident fund amount lying as credit in the PF Account of the concerned employees as on 30.8.2004 is required to be transferred to the petitioner market committee. It has been stated that so far as one of the employees, who has expired namely; Shri K.V.Chavda, is concerned, the liability is even otherwise agreed to be borne by respondent No.4 market committee as mentioned in the report. Therefore, if the payment is already made accordingly, qua the liability of Shri K.V.Chavda, it may stand excluded, but otherwise the amount lying as credit in the PF Account of the other employees whose services are allotted and transferred to the petitioner market committee deserves to be transferred to the petitioner market committee since such amount did not form part of the property of the market committee, but it was the property of the concerned employees themselves. Of course, the amount of loan from PF Account, if any, shall stand adjusted as per the scheme of PF and the remaining amount will be required to be transferred.

8. Mr.Rana, learned Counsel appearing for the petitioner submitted that such a treatment should also be given for the amount of gratuity and other benefits pertaining to the service conditions qua the employees, who are transferred to the petitioner market committee.

9. As such the amount of gratuity can be said as one of the statutory liabilities which may accrue in favour of any employee at the time of retirement or upon the end of employment and the amount towards liability of gratuity cannot be equated with the amount of PF account. Therefore, the said condition of Mr.Rana cannot be accepted.

10. A grievance was also raised on behalf of the petitioner that the division of the property of the market committees and more particularly the immovable properties is required to be made taking into consideration, not the book value but the market value.

11. It was submitted on behalf of Respondent No.4 that the practice is to make the division on the basis of the book value of the property and,

therefore, it has been submitted on behalf of respondent No.4 that the division is made by the Chartered Accountant based on the book value.

12. Mr.Mengdey, learned AGP is not in a position to show any instructions issued by the Government for any criteria to be adopted for the purpose of division of the properties of the market committee on account of the division.

13. As such if the division is to take place of the movable properties, including the fixed deposits, etc., based on the book value, such appears to be in order. However, the movable properties cannot be equated with the immovable properties if, in any case, purchased or developed long back. Even in the matter of division of the properties namely; when the process of valuation is being undertaken, such process, of course, is being made applicable qua movable properties too, but for movable properties book value may be reasonable. Therefore, it appears that in a matter of division of the properties of a market committee into two or more, the Chartered Accountant or

any other person well versed with the accounting procedure, when entrusted with the work of assessment of the assets and liabilities and its proportionate division amongst the newly constituted market committees, there should be some reasonable basis to take care of the appreciation or depreciation of the immovable properties as per the settled norms in the field of accounting and the valuation. Ultimately it will be for the State Government to consider the matter and to issue necessary instructions in this regard and to finalize such aspects. Suffice it to say that there may not be any exact actual valuation through any approved valuer or otherwise, but the reasonable aspects of the appreciation or depreciation of the properties deserve to be considered at the time when the State Government orders for division of the properties of the then market committee into two or more market committees. As there is no application of mind by the State Government in this regard, it appears that the State Government will have to examine the matter and

will be required to issue the necessary instructions and also the consequential orders for division of the properties of the market committees.

14. In view of the above, I find that the following directions shall meet with the ends of justice:-

(a) The PF amount, which was lying as credit in the account of the concerned employees whose services are allocated and transferred to the petitioner market committee, shall be transferred by respondent No.4 market committee within a period of 12 weeks from today. The amount so received by the petitioner market committee shall not be utilised for any other purpose, except for paying the PF to the concerned employees, as and when such contingencies arise, as per the PF applicable in accordance with law.

(b) The State Government, respondent No.1 herein, within a period of two weeks from

the date of receipt of the order, shall examine the matter and within two weeks thereafter shall issue appropriate orders for division of the properties of the then APMC, Borsad between the petitioner and respondent No.4 market committees on the ratio of 67.25% to be received by respondent No.4 market committee and 32.75% to be received by the petitioner market committee. However, while issuing the orders, the State Government shall also consider the matter, on the aspects of valuation of immovable properties of market committees taking into consideration the observations made by this Court herein above. It would be open to the State Government, on itself or through the District Registrar, to assign the work through any Chartered Accountant, including Shri Ashok B. Maheshwari & Co., Chartered Accountants, if the State Government finds it proper, who shall submit the report within a period of four weeks from the date of assigning of the work. After the report

is received, the District Registrar shall pass consequential orders for actual net amount to be transferred by the concerned market committee, may be petitioner or may be respondent, including the properties, if any.

(c)It is clarified that the directions given for division of the properties, as indicated herein above, or its compliance, shall not be made as a ground for not to transfer of the actual amount of PF which, as observed earlier, is the property of the concerned employees.

15.The petition is allowed in terms of the aforesaid directions. Rule made absolute accordingly. No order as to cost. Direct service to Respondent No.1.

5.9.2006 **(Jayant Patel, J.)**

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